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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 12/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

10/022,002

Applicant(s)

VENEGAS, FRANK

Examin r

Jennifer E. Novosad

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-- The MAILING DATE of this c mmunication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2001 .
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 .
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____ .

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following must be shown or the features canceled from the claims:

- (a) Sheathing surrounding *some* of the vertical and horizontal members, as in claims 1, 13, and 26 (it is noted that 168 in Figure 2B is sheathing);
- (b) The sheathing having an interior diameter greater than the outer diameter of the tube it covers and extending the length of the tube, as in claims 6 and 14;
- (c) the base having an outer diameter substantially the same as the outer diameter of the sheathing covering the tube, as in claims 9 and 22 (it is noted that Figure 2C does not show sheathing covering tube 148);
- (d) The set screw pressing against the sheathing, as in claims 12 and 25 (it is noted that once assembled the set screw in Figure 2B would press against the tube 166 not 168); and
- (e) The fitting covering a portion of the sheathing, as in claim 29.

No new matter should be entered. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to because of the following informalities:

- (a) Numeral "120" has been utilized (see page 4, line 1) to describe the casters, yet numeral 120" is designated to depict the horizontal work surface (see Figure 1) and the casters

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are not labeled at all in the drawings. *To correct this*, it is suggested that the casters be given a numeral different than "120" in the drawings and that "120" on page 4, line 1 be changed accordingly.

(b) The fittings shown in Figures 2A and 2B are not shown in Figures 1, 3 or 4; and

(c) In Figure 1, it appears that the horizontal work surface, labeled as numeral "120" is drawn incorrectly. Note specifically the left side the figure between the third and fourth elements (134).

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because it appears that "30", on page 4, line 5, should be changed to --130--. Appropriate correction is required.

Claim Objections

Claims 7, 12, 15, 20, 32 and 34 are objected to because of the following informalities:

In line 4 of claims 7 and 20, it is suggested that --at least one-- be inserted before "fitting".

In line 3 of claims 12 and 25, it appears that --the-- should be inserted before "tube" (second occurrence).

In line 1 of claim 15, "Modular" should be changed to --The modular--.

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In claim 32, line 3, it appears that --,-- (a comma) should be inserted after "first".

In claim 34, lines 4 and 9, it is suggested that ";" be changed to --:--.

In claim 34, line 11, it appears that "member" should be changed to --members--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the **first** paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims **1, 13, 32, and 33** are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In this case, the specification does not state how the sheathing is "removable and replaceable". It is noted that only Figure 2B shows the sheathing, i.e., element 168. It is further noted that page 6, line 19 of the specification recites that the sheathing "may be slid flush against the end of the fitting".

The following is a quotation of the **second** paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims **1-12, 13-25, 26-31, 32, 33, and 34** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "at least partially surrounding a work area" in claim 1, line 5 and claim 13, line 5 renders the claims indefinite since it is unclear from this *positive* recitation if it is applicant's intent to positively claim the "work area". *Accordingly*, it is suggested that --adapted to-- be inserted after "cubicle" in line 5 of claims 1 and 13.

Claim 1, line 11, claim 3, line 2, claim 17, line 2, claim 26, line 4, claim 27, line 2, and claim 28, line 2 recites the limitation "the members". There is insufficient antecedent basis for this limitation in the claims. It is noted that it is unclear whether each of the horizontal and vertical members is being referenced in each of these claims.

The use of the term "consumes" in claim 2 (line 4) and claim 13 (line 14) is awkward.

Claims 6 and 19 recite the limitations "**each** of the polymerized sheathings" (emphasis added) in line 2 and "the outer diameter of the metal tube" in lines 2-3. There is insufficient antecedent basis for these limitations in the claims. *Accordingly*, it is noted that the members have not been properly set forth as having a diameter, i.e., the members and sheathing have not been defined as being round, circular, etc., and the sheathing has not been properly set forth as "covering" (see line 3 of claims 6 and 19) the member.

Claims 7 and 20 recite the limitation "the outer diameter of the polymerized sheathing" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is noted that neither the members or sheathing have been properly set forth as having a diameter, i.e., the members and sheathing have not been defined as being round, circular, etc. *Further*, it is unclear what structure constitutes the radiused end" and how this end "matches" the outer diameter of the sheathing.

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The language of the recitation "engaged by" in line 3 of claims 10 and 23 is awkward. It appears that perhaps this recitation should be changed to --engaging--.

Claims 12 and 25 recites the limitation "the plastic sheathing" in lines 2-3. There is insufficient antecedent basis for this limitation in the claims. *Further*, it is unclear, in view of the drawings, how the set screw presses against the sheathing and how the fitting "grips the sheathing".

The use of the limitation "somewhat shorter" in claim 30 is awkward thereby rendering the claim indefinite since what is meant by "somewhat".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Insomuch as the claims are best understood (in view of the rejections under 35 USC § 112 as advanced above), claims 1, 2, 6, 13, 17, 26, 27, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schreiner et al. '658, alone.

Schreiner et al. '658 disclose a modular system which can be utilized to form a room divider whereby the system comprises horizontal work surface supported by some of the members, a plurality of vertical members (e.g., 44, 34) having lower ends configured to rest on a floor and a plurality of horizontal members (unnumbered - see Figure 7, horizontal member below 94) extending between the vertical members such that the vertical and horizontal members

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form a skeletal framework; structural connection fittings (at 86 and 70 in Figure 7) removably interconnecting the horizontal and vertical members; a plurality of sheathings (unnumbered - see Figure 5, sheathing surrounding vertical member 34 and in Figure 7, sheathing is 42 and 94 which surrounds horizontal member) surrounding some of the horizontal and vertical members; the vertical and horizontal members defining a plurality of vertical framed areas and an infill panel (e.g., 22, 150, etc.) is supported in each area.

The claims differ from Schreiner *et al.* '658 in requiring the sheathing to be polymeric (claims 1, 13, and 26).

Although Schreiner *et al.* '658 is silent as to the material from which the sheathing is made, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the sheathing from a polymeric material for ease in economy and manufacture.

Claims 3 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schreiner *et al.* '658 as applied to claims 1, 2, 6, 13, 17, 26, 27, and 29 above, and further in view of Ball *et al.* '769.

Schreiner *et al.* '658 disclose the system as advanced above.

The claims differ from Schreiner *et al.* '658 in requiring a cabinet suspended from the members.

Ball *et al.* '769 teach a divider system comprising a cabinet (unnumbered - see right side of Figure 1 above element 31) suspended from the members.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Schreiner *et al.* '658 with a cabinet for increased storage capabilities and capacity.

Claims 1, 2, and 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter *et al.* '802 in view of Brandenburg '334.

Richter *et al.* '802 disclose a modular system which can be utilized to form a room divider (see column 1, line 27) whereby the system comprises a plurality of vertical members (2) having lower ends (connected on 6) configured to rest on a floor and a plurality of horizontal members (2) extending between the vertical members such that the vertical and horizontal members form a skeletal framework; each of the members being defined by hollow, plastic tubes; structural connection fittings (at 5) removably interconnecting the horizontal and vertical members; a plurality of sheathings (at 7), i.e., made of Velcro, surrounding a portion, i.e., the sheathing is shorter than the tube (2), of each of the horizontal and vertical members; the sheathings having an interior diameter equal to the outer diameter of the tube it covers; the vertical and horizontal members defining a plurality of vertical framed areas and a fabric infill panel (4) is supported in each area; the vertical members defining a first, second, and third corner member so that a back wall (middle of Figure 1A), a first side wall partition (on left side of Figure 1A) and a second side wall partition (on right side of Figure 1A) are formed. *With respect to claims 7-10 and 20-23, insomuch as the claims are best understood (in view of the Section 112 rejections advanced above),* Richter *et al.* '802 is considered to disclose a slip-in fitting (5) having a base (at 39), an engagement member (at 13) extending therefrom which is configured to engage the inner diameter of the tubes (2), a connector (at 25) which connects (at 30) the fitting

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(5) to the tube (2), and the engagement member (13) comprising a pair of engagement fingers (21 and 23).

The claims differ from Richter *et al.* '802 in requiring: (a) the sheathing to be polymeric (claim 1); (b) a horizontal support surface supported by the members (claim 1); and (c) the members to be defined by hollow, metal tubes (claim 5).

With respect to (a), although Richter *et al.* '802 disclose the sheathing being made from VelcroTM, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the sheathing from a polymeric material for ease in economy and manufacture.

With respect to (b), Brandenburg '334 teaches a horizontal support surface (33) supported (at 27) by a vertical member in a system.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Richter *et al.* '802 with a horizontal support surface for increased ease in use to the consumer.

With respect to (c), while Richter *et al.* '802 disclose the members being comprised of hollow, plastic tubes, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the tubes from metal for increased stability of the system.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richter *et al.* '802 in view of Brandenburg '334 as applied to claims 1, 2, and 5-10 above, and further in view of Williams '544.

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The claim differs from the above references in requiring the vertical members to each have a caster.

Williams '544 teaches that it is old in the art to utilize casters in a modular system.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Richter *et al.* '802 with casters for ease in maneuverability of the system and ease to the consumer.

Insomuch as the claims are best understood (in view of the rejections under 35 USC § 112 as advanced above), claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter *et al.* '802 in view of Brandenburg '334 as applied to claims 1, 2, and 5-10 above, and further in view of Noble '412.

The claims differ from the above references in requiring at least one fitting having an inner diameter greater than the outer diameter of the tube to which it is connected and a set screw to grip the tube.

Noble '412 teaches a modular system comprising fittings (at 50) which have a greater inner diameter than the tubes (20) to which they are connected and a set screw (64) grips the tube when the fitting is attached thereto.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Richter *et al.* '802 with a fitting defining a slip-on fitting having a set screw, for ease in assembly while allowing for increased securement.

Claims 13, 14, 18-23, 26, 30, 31, 32, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter *et al.* '802, alone.

Richter *et al.* '802 disclose the system as advanced above.

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The claims differ from Richter *et al.* '802 in requiring: (a) the sheathing to be polymeric (claims 13, 26, 32, and 33); (b) the members to be defined by hollow, metal tubes (claims 18, 31); and (c) a side wall extending from the first partition and a front wall extending from the side wall (claim 34).

With respect to (a), although Richter *et al.* '802 disclose the sheathing being made from VelcroTM, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the sheathing from a polymeric material for ease in economy and manufacture.

With respect to (b), while Richter *et al.* '802 disclose the members being comprised of hollow, plastic tubes, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the tubes from metal for increased stability of the system.

With respect to (c), although Richter *et al.* '802 do not show a side wall extending from the first partition and a front wall extending from the side wall, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Richter *et al.* '802 with a fourth frame (3) connected to the first partition and a fifth frame (3) connected to the fourth frame to thereby define a side wall and a front wall, as called for in the claims, to thereby create a larger partition which allows for ease to the consumer.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richter *et al.* '802 as applied to claims 13, 14, 18-23, 26, 30, 31, 32, and 33 above, and further in view of Goddard '834.

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Richter *et al.* '802 disclose the system as advanced above where the infill panels are fabricated from fabric.

The claim differs from Richter *et al.* '802 in requiring the infill panels to be mesh.

Goddard '834 teaches that it is old in the art to utilize mesh panels (see column 1, line 67) in a partition assembly.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Richter *et al.* '802 with mesh panels, as taught by Goddard '834 for ease in economy and manufacture.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richter *et al.* '802 as applied to claims 13, 14, 18-23, 26, 30, 31, 32, and 33 above, and further in view of Edwards '760.

Richter *et al.* '802 disclose the system as advanced above where the infill panels are fabricated from fabric.

The claim differs from Richter *et al.* '802 in requiring the infill panels to comprise sound absorption panels.

Edwards '760 teaches a modular partition comprising sound absorption panels (see column 5, lines 38-41).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Richter *et al.* '802 with sound absorption panels, as taught by Edwards '760 for ease in use to the consumer.

Insomuch as the claims are best understood (in view of the rejections under 35 USC § 112 as advanced above), claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being

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unpatentable over Richter *et al.* '802 as applied to claims 13, 14, 18-23, 26, 30, 31, 32, 33, and 34 above, and further in view of Noble '412.

The claims differ from Richter *et al.* '802 in requiring at least one fitting having an inner diameter greater than the outer diameter of the tube to which it is connected and a set screw to grip the tube.

Noble '412 teaches a modular system comprising fittings (at 50) which have a greater inner diameter than the tubes (20) to which they are connected and a set screw (64) grips the tube when the fitting is attached thereto.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Richter *et al.* '802 with a fitting defining a slip-on fitting having a set screw, for ease in assembly while allowing for increased securement.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-305-3597 for regular communications and (703)-305-3597 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.

Jennifer E. Novosad/jen
December 9, 2002

A handwritten signature in black ink that reads "Daniel P. Stodola". The signature is written in a cursive style with a large, looped initial "D".

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600